

House File 649

S-3340

1 Amend the amendment, S-3293, to House File 649,
2 as amended, passed, and reprinted by the House, as
3 follows:

4 1. Page 52, after line 28 by inserting:

5 <DIVISION

6 ABORTION LIMITATIONS

7 Sec. ____ FINDINGS. The general assembly finds all
8 of the following:

9 1. Abortion can cause serious short-term and
10 long-term physical and psychological complications for
11 women including but not limited to uterine perforation,
12 uterine scarring, cervical perforation or other
13 injury, infection, bleeding, hemorrhage, blood clots,
14 failure to actually terminate the pregnancy, incomplete
15 abortion or retained tissue, pelvic inflammatory
16 disease, endometritis, missed ectopic pregnancy,
17 cardiac arrest, respiratory arrest, renal failure,
18 metabolic disorder, shock, embolism, coma, placenta
19 previa in subsequent pregnancies, preterm delivery in
20 subsequent pregnancies, free fluid in the abdomen,
21 organ damage, adverse reactions to anesthesia and other
22 drugs, and psychological or emotional complications
23 such as depression, anxiety, sleeping disorders, and
24 death.

25 2. Abortion has a higher medical risk when the
26 procedure is performed later in the pregnancy.
27 Compared to an abortion at eight weeks' gestation or
28 earlier, the relative risk increases exponentially
29 at higher gestations. The incidence of major
30 complications is highest after twenty weeks of
31 gestation.

32 3. The state has a compelling interest in the
33 public's health and safety.

34 4. The state has a compelling interest from the
35 outset of pregnancy in protecting the health of the
36 woman. More specifically, the state has a compelling
37 interest in protecting the health of women who undergo
38 abortions.

39 5. There is substantial evidence that no later than
40 twenty weeks after fertilization, an unborn child has
41 the physical structures necessary to experience pain.

42 6. There is substantial evidence that by twenty
43 weeks after fertilization, an unborn child seeks to
44 evade certain stimuli in a manner which, in an infant
45 or an adult, would be interpreted as a response to
46 pain.

47 7. Anesthesia is routinely administered to an
48 unborn child twenty weeks or more after fertilization
49 when the unborn child undergoes prenatal surgery.

50 8. Even before twenty weeks after fertilization,

1 the unborn child has been observed to exhibit hormonal
2 stress responses to painful stimuli, and a reduction
3 in such response results when pain medication is
4 administered directly to the unborn child.

5 9. It is the purpose of the state of Iowa to assert
6 a compelling state interest in protecting the unborn
7 child from the stage at which substantial medical
8 evidence indicates the unborn child is capable of
9 feeling pain.

10 Sec. _____. NEW SECTION. 146A.1 Definitions.

11 As used in this chapter, unless the context
12 otherwise requires:

13 1. *"Abortion"* means abortion as defined in section
14 146.1.

15 2. *"Attempt an abortion"* means an act, or an
16 omission of a statutorily required act, that, under
17 the circumstances as the actor believes them to be,
18 constitutes a substantial step in a course of conduct
19 planned to culminate in an abortion.

20 3. *"Department"* means the department of public
21 health.

22 4. *"Fertilization"* means the fusion of a human
23 spermatozoon with a human ovum.

24 5. *"Medical emergency"* means a condition which, in
25 reasonable medical judgment, so complicates the medical
26 condition of a pregnant woman as to necessitate the
27 termination of the human pregnancy to avoid a serious
28 risk of death or substantial and irreversible physical
29 impairment of a major bodily function. *"Medical*
30 *emergency"* does not include a condition which is based
31 on a claim or diagnosis that the pregnant woman will
32 engage in conduct which would result in the pregnant
33 woman's death or in substantial and irreversible
34 physical impairment of a major bodily function.

35 6. *"Medical facility"* means any public or private
36 hospital, clinic, center, medical school, medical
37 training institution, health care facility, physician's
38 office, infirmary, dispensary, ambulatory surgical
39 center, or other institution or location where medical
40 care is provided to any person.

41 7. *"Physician"* means a person licensed under
42 chapter 148.

43 8. *"Postfertilization age"* means the age of the
44 unborn child as calculated from the fertilization of
45 the human ovum.

46 9. *"Probable postfertilization age"* means what,
47 in reasonable medical judgment, will with reasonable
48 probability be the postfertilization age of the unborn
49 child at the time an abortion is to be performed.

50 10. *"Reasonable medical judgment"* means a medical

1 judgment made by a reasonably prudent physician who
2 is knowledgeable about the case and the treatment
3 possibilities with respect to the medical conditions
4 involved.

5 11. "*Unborn child*" means an individual organism of
6 the species homo sapiens from fertilization until live
7 birth.

8 Sec. _____. NEW SECTION. 146A.2 Determination of
9 postfertilization age prior to abortion — abortion
10 prohibited at twenty weeks or more postfertilization age
11 — exceptions — reporting requirements — penalties.

12 1. Except in the case of a medical emergency,
13 an abortion shall not be performed, induced, or
14 attempted unless the physician performing, inducing, or
15 attempting the abortion has first made a determination
16 of the probable postfertilization age of the unborn
17 child or relied upon such a determination made by
18 another physician. In making such a determination, a
19 physician shall make such inquiries of the pregnant
20 woman and perform or cause to be performed such medical
21 examinations and tests a prudent physician would
22 consider necessary in making a reasonable medical
23 judgment to accurately determine the postfertilization
24 age of the unborn child.

25 2. A physician shall not perform, induce, or
26 attempt an abortion upon a pregnant woman when it has
27 been determined, by the physician performing, inducing,
28 or attempting the abortion or by another physician
29 upon whose determination that physician relies, that
30 the probable postfertilization age of the unborn child
31 is twenty weeks or more unless, in the physician's
32 reasonable medical judgment, any of the following
33 applies:

34 a. The pregnant woman has a condition which the
35 physician deems a medical emergency.

36 b. It is necessary to preserve the life of an
37 unborn child.

38 3. A physician who performs, induces, or attempts
39 an abortion shall report to the department, on a
40 schedule and in accordance with forms and rules adopted
41 by the department, all of the following:

42 a. If a determination of probable postfertilization
43 age of the unborn child was made, the probable
44 postfertilization age determined and the method and
45 basis of the determination.

46 b. If a determination of probable postfertilization
47 age of the unborn child was not made, the basis of the
48 determination that a medical emergency existed.

49 c. If the probable postfertilization age of the
50 unborn child was determined to be twenty weeks or more,

1 the basis of the determination of a medical emergency,
2 or the basis of the determination that the abortion was
3 necessary to preserve the life of an unborn child.

4 4. a. By June 30, annually, the department shall
5 issue a public report providing statistics for the
6 previous calendar year, compiled from the reports for
7 that year submitted in accordance with subsection

8 3. The department shall ensure that none of the
9 information included in the public reports could
10 reasonably lead to the identification of any woman upon
11 whom an abortion was performed.

12 b. (1) A physician who fails to submit a report by
13 the end of thirty days following the due date shall be
14 subject to a late fee of five hundred dollars for each
15 additional thirty-day period or portion of a thirty-day
16 period the report is overdue.

17 (2) A physician required to report in accordance
18 with subsection 3 who has not submitted a report or who
19 has submitted only an incomplete report more than one
20 year following the due date, may, in an action brought
21 in the manner in which actions are brought to enforce
22 chapter 148, be directed by a court of competent
23 jurisdiction to submit a complete report within a time
24 period stated by court order or be subject to contempt
25 of court.

26 (3) A physician who intentionally or recklessly
27 falsifies a report required under this section is
28 subject to a civil penalty of one hundred dollars.

29 5. Any medical facility in which a physician is
30 authorized to perform an abortion shall implement
31 written medical policies and procedures consistent with
32 the requirements and prohibitions of this chapter.

33 6. The department shall adopt rules to administer
34 this section.

35 Sec. _____. NEW SECTION. 146A.3 Civil and criminal
36 actions — penalties.

37 1. Failure of a physician to comply with any
38 provision of section 146A.2, with the exception of the
39 late filing of a report or failure to submit a complete
40 report in compliance with a court order, is grounds for
41 license discipline under chapter 148.

42 2. A physician who intentionally or recklessly
43 performs, induces, or attempts an abortion in violation
44 of this chapter is guilty of a class "C" felony.

45 3. A woman upon whom an abortion has been performed
46 or induced in violation of this chapter or the
47 biological father may maintain an action against the
48 physician who performed or induced the abortion in
49 intentional or reckless violation of this chapter
50 for actual damages. This subsection shall not be

1 interpreted to apply to a biological father when the
2 pregnancy is the result of rape or incest.

3 4. A woman upon whom an abortion has been attempted
4 in violation of this chapter may maintain an action
5 against the physician who attempted the abortion in
6 intentional or reckless violation of this chapter for
7 actual damages.

8 5. A cause of action for injunctive relief to
9 prevent a physician from performing, inducing, or
10 attempting abortions may be maintained against a
11 physician who has intentionally violated this chapter
12 by the woman upon whom the abortion was performed,
13 induced, or attempted, by the spouse of the woman, by a
14 parent or guardian of the woman if the woman is less
15 than eighteen years of age or unmarried at the time
16 the abortion was performed, induced, or attempted,
17 by a current or former licensed health care provider
18 of the woman, by a county attorney with appropriate
19 jurisdiction, or by the attorney general.

20 6. A woman upon whom an abortion was performed,
21 induced, or attempted shall not be subject to
22 prosecution for a violation of this chapter.

23 7. If the plaintiff prevails in an action brought
24 under this section, the plaintiff shall be entitled to
25 an award for reasonable attorney fees.

26 8. If the defendant prevails in an action brought
27 under this section and the court finds that the
28 plaintiff's suit was frivolous and brought in bad
29 faith, the defendant shall be entitled to an award for
30 reasonable attorney fees.

31 9. Damages and attorney fees shall not be assessed
32 against the woman upon whom an abortion was performed,
33 induced, or attempted except as provided in subsection
34 8.

35 10. In a civil or criminal proceeding or action
36 brought under this chapter, the court shall rule
37 whether the identity of any woman upon whom an abortion
38 has been performed, induced, or attempted shall be
39 protected from public disclosure if the woman does
40 not provide consent to such disclosure. The court,
41 upon motion or on its own motion, shall make such a
42 ruling and, upon determining that the woman's identity
43 should be protected, shall issue orders to the parties,
44 witnesses, and counsel and shall direct the sealing
45 of the record and exclusion of individuals from
46 courtrooms or hearing rooms to the extent necessary to
47 safeguard the woman's privacy. Each such order shall
48 be accompanied by specific written findings explaining
49 why the identity of the woman should be protected
50 from public disclosure, why the order is essential to

1 that end, how the order is narrowly tailored to serve
2 that interest, and why no reasonable less restrictive
3 alternative exists. In the absence of written consent
4 of the woman upon whom an abortion has been performed,
5 induced, or attempted, anyone, other than a public
6 official, who brings an action under this section shall
7 do so under a pseudonym. This subsection shall not be
8 construed to conceal the identity of the plaintiff or
9 of witnesses from the defendant or from attorneys for
10 the defendant.

11 Sec. _____. NEW SECTION. 146A.4 Construction.

12 Nothing in this chapter shall be construed as
13 creating or recognizing a right to an abortion.

14 Sec. _____. NEW SECTION. 146A.5 Severability clause.

15 If any provision of this chapter or its application
16 to any person or circumstance is held invalid,
17 the invalidity does not affect other provisions or
18 application of this chapter which can be given effect
19 without the invalid provision or application, and to
20 this end the provisions of this chapter are severable.

21 Sec. _____. EFFECTIVE UPON ENACTMENT. This division
22 of this Act, being deemed of immediate importance,
23 takes effect upon enactment.>>

DAVID JOHNSON